IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5557 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DHIRAJLAL ZAVERDAS PARMAR - Petitioner(s)
Versus
MANAGING DIRECTOR & 2 - Respondent(s)

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Appearance :
MR IS SUPEHIA for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 3.
MR HS MUNSHAW for Respondent(s) : 1, 3,
Mr. DIPEN DESAI, Asst. GOVERNMENT PLEADER for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 04/04/2007

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner, ex-

Agricultural Assistant, has prayed for an appropriate writ, direction or order quashing and setting aside the order dated 30th May 1997 and the letter dated 25/26.6.1997 pertaining to recovery of an amount of Rs. 35,712, with a further prayer for an appropriate order directing the respondents to return the aforesaid amount of Rs. 35,712 to the petitioner.

2. It is the case on behalf of the petitioner that the petitioner was appointed on 1.11.60 as Agricultural Assistant under the Agricultural Department of the State of Gujarat; he came to be retired from Government service from 21.10.1991 without earning any promotion; and he came to be absorbed in Gujarat State Land Development Corporation, Gandhinagar on permanent basis where he continued upto 30th June 1996 till he reached the age of 58 years. It is the case on behalf of the petitioner that the Government of Gujarat issued Resolution dated 5.7.91 laying down the scheme of higher grade scale and as per

the said scheme an employee who did not earn any promotion during his 9, 18 and 27 years of service was to be given the benefit of three higher grade scales counting from the date of appointment and accordingly the petitioner was given 3 higher grade scales. It is the case on behalf of the petitioner that the petitioner could get first higher grade scale on 28.4.92 and 2nd and 3rd grade scales were given on 23rd September 1993 as per Resolution dated 5.7.1991. The Resolution dated 5.7.1991 came to be substantially modified by Resolution dated 16.8.1994 and as per the said Resolution an employee would get his higher grade from 1.6.1987 if he has completed 9 years or more service as on that date, the 2nd and 3rd higher grade scales were to be given after completing 9 years and 18 years after 1.6.1987. It is the case on behalf of the petitioner that in the said Government Resolution dated 16.8.1994 it was further provided that no recovery of over-payment made to an employee on the basis of the Resolution dated 5.7.1991 was to be made from him if he has retired before

1.8.1994. That by letter dated 03/4.5.96 respondent No.3 ordered recovery of Rs. 42,048 from the petitioner on account of overpayment due to cancellation of 2nd and 3rd higher grade scales which was challenged by the petitioner before this Court by way of Special Civil Application No. 3777 of 1996. That by Judgment and order dated 19.8.96 the said petition came to be allowed on the ground that the petitioner was not heard before passing the order dated 3.5.1996 and liberty was reserved in favour of the respondents to pass appropriate orders after hearing the petitioner. That a notice dated 27.11.1996 was issued to the petitioner by the Deputy Secretary calling upon the petitioner for hearing and the petitioner gave a written reply dated 21.1.1997 and the petitioner was also personally heard by the Deputy Secretary. That by order dated 30th May 1997 the State Government rejected the request of the petitioner and ordered recovery of overpayment. That a consequential order/letter was issued by the respondent No.3 dated 25/26.6.97 informing the petitioner that he has

recovered the amount of Rs. 34,233 from the outstanding dues of the petitioner. Being aggrieved and dissatisfied with the aforesaid order passed by the State Government dated 30th May 1997 as well as the order of recovery dated 25/26.6.97 the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India.

3. At the outset, it is to be noted that Shri AS Supehia, learned advocate appearing for the petitioner has submitted that he does not challenge the order passed by the respondent by which it is held that the petitioner is not entitled to the benefit of 2nd and 3rd higher grade scales however the petition be restricted to that part of the order dated 30th May 1997 passed by which the State Government has passed the order of recovery of the amount of Rs. 34,233. Under the circumstances, the only grievance/dispute which is required to be considered by this Court is with regard to the order of recovery of Rs.

34,233.

4. Shri Supehia, learned advocate appearing for the petitioner has relied upon Clause 3(28) of the Resolution dated 16.8.1994 and has submitted that the petitioner was given the benefit of 2nd and 3rd higher grade scales pursuant to the resolution dated 5.7.1991 which was subsequently modified by resolution dated 16.8.1994 and the petitioner was paid the difference and/or the amount which was payable to the petitioner on granting benefit of 2nd and 3rd higher grade scale in the year 1993 and when the aforesaid demand was made there was no mistake on the part of the petitioner, and therefore the order of recovery should be quashed and set aside. Shri Supehia, learned advocate has relied upon the following judgments in support of his submission and against the recovery of excess payment;

1. Shyam Babu Verma And Others Vs. Union of India And Others,

(1994) 2 S.C.C. 521.

2. Sahib Ram Vs. State of Haryana & Others.,

1995 Supp (1) S.C.C. 18.

3. Unreported Judgment of the Division Bench in the case of I.C. Patel Vs. Gujarat Housing Board dated 4.4.2001 in LPA No. 578 of 2002 in S.C.A. No. 2196 of 1999.

4. P.H. Reddy and Ors. Vs. N.T.R.D. & Ors., 2002 (2) S.L.R. 694.

5. Unreported Judgment of learned Single Judge of this Court dated 28.1.2003 in Special Civil Applications No. 6006 to 6008 confirmed by Division Bench in LPA No. 750, 756, and 759 of 2003 in the case of Secretary, Finance Department Vs. M.M. Patel & Others.

6. Purshottam Lal Das & Ors. Vs.

The State of Bihar & Ors.,

2006 AIR SCW 5325.

7. Col. B.J. Akkara (Retd.) Vs. Government of India And Others,

(2007) 1 SCC (L&S)529.

Relying upon the aforesaid decisions of the

Hon'ble Supreme Court as well as this Court, Shri Supehia, learned advocate appearing on behalf of the petitioner has submitted that considering the aforesaid decisions of the Hon'ble Supreme Court as well as this Court, the impugned order of recovery requires to be quashed and set aside and the amount which is already recovered is to be refunded. Shri Supehia has further submitted that the Hon'ble Supreme Court in the case of ***Col. B.J. Akkara (Retd.)*** *[supra]* has laid down guidelines and conditions against recovery of excess wrong payment of emoluments/allowances from an employee and placing reliance upon the same has requested to allow the present Special Civil Application and quash and set aside the order of recovery and return the amount of Rs. 34,233 along with interest at 12% p.a.

5. Shri HS Munshaw, learned advocate has appeared on behalf of respondent No.1 and Shri Dipen Desai, learned AGP has appeared on behalf of respondents No. 2 and 3. While opposing the present Special Civil Application, Shri Dipen

Desai, learned AGP has vehemently submitted that in the present case it is not a question of recovery of amount paid in excess which was paid by mistake and/or on wrong interpretation of the Government Resolution dated 5.7.1991. It is submitted that in the present case by resolution dated 16.8.1994 the earlier resolution dated 5.7.1991 has been substantially modified with effect from 1.6.1987 and resolution dated 5.7.1991 has been cancelled *ab initio* and there is a change in the mode of grant of benefit of higher grade scales. It is further submitted that as per the Government Resolution dated 16.8.1994 the first selection grade was required to be given only on completion of 9 years as on 1.6.1997 and thereafter on completion of 18 and 27 years further benefit of 2nd and 3rd higher grade scales is required to be given. It is further submitted by him that as per the said Government Resolution dated 16.8.1994 all those orders granting the benefit of 2nd and 3rd higher grade scales are required to be treated as cancelled and the amount which is already

deposited in the General Provident Fund is required to be transferred to Government. It is further submitted by him that as the said Government Resolution was issued in the year 1994, the State Government has taken a conscious decision considering the cases of those employees who have retired prior to August 1994 so that they may not have to suffer and therefore it is provided in Clause 3(28) of the said Resolution that with regard to those employees who have retired prior to 1st August 1994 there shall not be any recovery and/or their salaries/pay-scales are not required to be refixed. It is further submitted by him that so far as the Government Resolution dated 16.8.1994 is concerned the same has not been challenged by the petitioner. Therefore it is submitted by him that it is not a question of excess payment made due to a mistake and/or on wrong calculation and/or by applying a wrong principle, or on the basis of a wrong interpretation which is subsequently found to be erroneous. It is, therefore submitted that all those decisions upon which reliance has been

placed on behalf of the petitioner are not applicable to the facts of the present case. It is submitted that the cases upon which reliance has been placed are the cases wherein it was found that excess payment is made by the employer either by applying a wrong principle or calculation and/or on the basis of a particular interpretation of rule/order which was subsequently found to be erroneous and in a case where the excess payment was not made on account of any misrepresentation or fraud on the part of the employee. It is further submitted that in the present case even the amount is already recovered before the petition was filed and therefore it is requested to dismiss the present Special Civil Application.

6. Heard the learned advocates appearing on behalf of the parties. The petitioner was granted benefit of higher grade scales pursuant to resolution dated 5.7.1991 and the benefit of first higher grade scale was given to the

petitioner on 28.4.1992 and benefits of 2nd and 3rd higher grade scales were given to the petitioner on 23rd September 1993. The petitioner has retired from Government service on 30th June 1996. It is required to be noted that as per the Government Resolution dated 5.7.1991 the benefits of 1st, 2nd and 3rd higher grade scales were given after completion of 9 years, 18 years and 27 years from the date of initial appointment and not from 1.6.1987 and accordingly the petitioner was granted the benefit of 1st, 2nd and 3rd higher grade scales. By Government Resolution dated 16th August 1994, the policy of grant of higher grade scales came to be substantially and/or *ab initio* modified and virtually the Government Resolution dated 5.7.1991 was cancelled and in place of G.R., dated 5.7.1991, new G.R., dated 16th August 1994 came to be issued with regard to benefit of 1st, 2nd and 3rd higher grade scales on completion of 9 years, 18 years and 27 years and as per the Government Resolution dated 16th August 1994 an employee will be given the 1st higher grade scale

on completion of 9 years as on 1st June 1987 irrespective of the fact whether he has earlier completed 9 years or not and the 2nd and 3rd higher grade scales were to be given on completion of 18 years and 27 years from 1st June 1987. In the said Resolution dated 16th August 1994, it is also specifically provided that with regard to those employees in whose favour orders with regard to granting of 2nd and 3rd higher grade scales are already passed they may be treated as cancelled and the difference of amount paid on the basis of grant of benefit of 2nd and 3rd higher grade scales and deposited in the G.P.F., will be required to be transferred to the Government accounts, for which separate orders will be passed. In Clause 3.25 of the Government Resolution dated 16th August 1994 this aspect is clarified wherein it is stated that, as for example, if an employee has got selection grade on 1.1.1973 and if he opts for the selection grade pay-scale, in that case he will be getting the benefit of 1st higher grade scale on 1.6.1987 and not on 1.1.1982.

Considering the plight of those employees who have retired prior to 1st August 1994, it is specifically provided by the State Government in Clause 3(28) of the resolution that in cases of those employees who have retired prior to 1st August 1994 there shall not be any recovery on implementation of the Government Resolution dated 16th August 1994 and that their salaries are not required to be refixed. It is also provided in the said Clause that with regard to those employees who have retired upto 31st July 1994 and for whom higher grade scale is not fixed upto 31st July 1994 due to administrative reason, higher pay-scale is required to be fixed in case of those employees followed by consequential benefits such as pension considering their position prior to 16th August 1994. It is also further provided that with regard to those employees who have retired prior to 1st August 1994 recovery from pension on refixation of 2nd and 3rd higher grade scales is waived. Thus, the State Government has considered the difficulties

faced by those employees who have retired prior to 1st August 1994, meaning thereby position prevailed prior to modified resolution. It is required to be noted that the Government Resolution dated 16th August 1994 has not been challenged by the petitioner. Admittedly the petitioner has retired on 30th June 1996. Therefore, the petitioner is not entitled to the benefit of Clause 3(28) of G.R., dated 16th August 1994 as admittedly the petitioner has retired after 1st August 1994. In absence of any challenge to the G.R., dated 16th August 1994, the differential amount on refixation of higher grade scales on implementation of the G.R., dated 16th August 1994, the petitioner is required to refund and the same is recovered by the respondents. Under the circumstances, it cannot be said that there is any illegality committed by the respondents in recovering the amount of Rs. 35,712. On the contrary, the respondents have rightly implemented the G.R., dated 16th August 1994 which is not under challenge. In the

petition, the petitioner has relied upon Clause 3(28) of the G.R., dated 16th August 1994, however as stated above Clause 3(28) would be applicable only with regard to those employees who have retired prior to 1st August 1994 and/or in whose favour due to administrative reason the pay-fixation was not done and/or benefits of 2nd and 3rd higher grade scales were not given. Admittedly, the petitioner has retired on 30th June 2006 on attaining the age of 58 years.

7. It is required to be noted that the learned counsel appearing on behalf of the petitioner has made it clear that the present petition be restricted to the order of recovery of Rs. 35,712 only and the petitioner is not challenging the action of the respondents in refixing the benefit of 2nd and 3rd higher grade scales on implementation of Government Resolution dated 16th August 1994. Relying upon the decisions of the Hon'ble Supreme Court in the case of ***Shyam Babu Verma And Others*** *[supra];*

Sahib Ram *[supra];* ***P.H. Reddy and Others*** *[supra];* ***Purshottam Lal Das & Others*** *[supra];* ***Col. B.J. Akkara (Retd.)*** [supra]; and the Judgment of the Division Bench in the case of ***I.C. Patel [supra]***, the learned counsel appearing on behalf of the petitioner has submitted that the order of recovery of Rs. 35,712/- is required to be quashed and set aside as there was no mistake on the part of the petitioner when the benefit was given to the petitioner. On going through the said decisions relied upon by the learned counsel appearing on behalf of the petitioner, it appears to the Court that none of the decisions is applicable to the facts of the present case.

8. In the case of ***Uttaranchal Road Transport Corpn. And others V. Mansaram Nainwal,*** reported in (***2006) 6 SCC 366,*** the Hon'ble Supreme Court has observed as under;

"A decision is a precedent on its own facts. Each case

presents its own features. It is not everything said by a judge while giving judgment that constitutes a precedent. The only thing in a judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyze a decision and isolate from it the ratio decidendi. According to the well settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of fact is the inference which the judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. A case is a precedent and binding for what it explicitly decides and no more. The words used by judges in their judgments are not to be read as if they are words in an Act of Parliament. In Quinn Vs. Leathem, Earl of Halsbury, L.C., observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there

> *are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.*

In the case of ***Dhodha House V. S.K. Maingi,*** reported in 2006) 9 SCC 41, the Hon'ble Supreme Court has observed as under;

> *"It is well settled that a decision is an authority for what it decides and not what can logically be deducted therefrom".*

9. The Hon'ble Supreme Court in the aforesaid decisions which are relied upon by the learned advocate appearing on behalf of petitioner had an occasion to deal with the facts where recoveries were effected from the employee concerned due to excess payments which were made wrongly and/or difference amount of salary which was paid to the employee concerned by mistake of Department and for which it has been found that there was no fault on the part of the employee.

In the case of ***Purshottam Lal Das [Supra],*** the Hon'ble Supreme Court, while dealing with the case of recovery of excess salary paid where the appellants were already promoted and had worked in promotional posts but the promotions were subsequently found to be improper and the appellants were found to be not at fault, directed that there shall be no recovery to be made from the amounts already paid in respect of the promotional posts.

9.1. Similarly, in the case of ***P.H. Reddy & Others [supra],*** where it was found that the employees had been in receipt of a higher amount on account of erroneous fixation by the authority, the Hon'ble Supreme Court set aside the order of recovery against payment of salary on account of erroneous fixation by the authority on the ground that the employees were not at fault.

9.2. In the case of ***Col. B.J. Akkara (Retd.)***

[supra], the Hon'ble Supreme Court has laid down the following conditions while observing that if such conditions are fulfilled, there can be relief against recovery of excess wrong payment of emoluments/allowances from an employee;

(a) the excess payment was not made on account of any misrepresentation or fraud on the part of the employee;

(b) such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

9.3. Even in the case of ***I.C. Patel (supra)*** before the Division Bench, it was the case of recovery of excess amount paid to the employee by mistake committed by the Board and it was found that the recovery of the excess payment made to the appellant for no fault on his part as unjustified. Subsequently, the learned Single

Judge of this Court, in the case of ***Secretary, Finance Department Vs. M.M. Patel and Others (supra),*** relying upon the judgment of the Division Bench in the case of ***I.C. Patel (supra)*** and the judgment of the Hon'ble Supreme Court in the case of ***P.H. Reddy (supra)*** set aside the order of recovery of excess payment made to the employee which was paid because of mistake committed by the department.

10. Thus, considering the facts of each of the decisions referred to hereinabove, it appears that the recovery was sought from the employee against excess amount paid due to wrong fixation and/or by mistake of the department for which the employee was not at fault and therefore in such cases it is held that it being a mistake on the part of the Board or department and payment was made due to wrong fixation of salary for which the employee should not be penalised. Considering the facts of the case on hand, such a situation is not there. It is not a case that recovery is sought for against excess amount paid

on the basis of wrong fixation by the department. In the present case, the recovery is effected on the basis of the subsequent resolution dated 16th August 1994 modifying the earlier resolution dated 5.7.1991 and *ab initio* modifying the grant of benefit of higher grade scales, which has been accepted by the petitioner. It is required to be noted that the scheme/grant of benefit of the higher grade scales has been *ab initio* modified right from very beginning and the salaries are refixed. Thus, it is not a case of fixation of salary on wrong interpretation of the G.R. dated 5.7.1991 and/or by mistake on the part of the department. It is also required to be noted that the State Government has considered the difficulties which might be faced by those employees who have already retired prior to 31st July 1994/1st August 1994 and whose pensions are fixed based on fixation of salaries on grant of benefit of higher grade scales, considering the position prevailing prior to G.R., dated 16.8.1994 meaning thereby the Resolution dated 5.7.1991 and Clause 3(28) of the Resolution dated

16.8.1994 specifically provides that with regard to those employees who have retired prior to 31st August 1994 there shall not be any recovery either against excess payment made on refixation and/or payment made towards pension. Thus, even Clause 3(28) is in line with what is observed by the Hon'ble Supreme Court in aforesaid decisions. Considering the above, none of the decisions relied upon by the petitioner referred to hereinabove is of any assistance to the petitioner and they will not be applicable to the facts of the present case.

11. For the reasons stated above, the petition fails. It cannot be said that the respondents have committed any illegality and/or acted arbitrarily in recovering the amount of Rs. 35,712. On the contrary, the said recovery is made in accordance with the Resolution dated 16th August 1994 which is not challenged by the petitioner, but the same has been accepted by the petitioner. Hence, Rule is discharged. In the facts and circumstances of the case, there shall

be no order as to costs.

[M.R. Shah, J.]

rmr.